

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**City Council Chambers**  
**Wednesday, September 11, 2013**  
**6:00 p.m.**

**1) CALL MEETING TO ORDER**

The meeting was called to order at 6:00 p.m.

**2) ROLL CALL**

Commissioners:       Duncan McIntosh, Chair  
                              Brad Avery, Vice Chair  
                              Paul Blank  
                              David Girling  
                              Joe Stapleton  
                              Doug West  
                              Karen Rhyne, excused absence

Staff Members:       Chris Miller, Harbor Resources Manager  
                              Shannon Levin, Harbor Resources Supervisor

Council Liaison:       Council Member Nancy Gardner

**3) PLEDGE OF ALLEGIANCE**

**4) PUBLIC COMMENTS**

Chair McIntosh invited those interested in addressing the Commission to do so at this time.

Jim Mosher commented on posting recordings of Harbor Commission meetings on the City's website. Additionally, he commented on mega-yachts in the Harbor and referenced notes on Council's most recent meeting noting there was a decision about residential trash that he felt was rushed; based on incomplete information and that at the last Harbor Commission the decision regarding mega-yachts was also rushed with insufficient information. He referenced a provision in the Harbor Code indicating there is supposed to be a map at the City Clerk's office that shows where anchorages designated by Council are located. Additionally, he referenced a prior comment made by Commissioner West that anyone on a ship that was on public water could anchor, and Mr. Mosher stated that the Code does not seem to say that, nor does the Cruising Guide. He commented on temporary moorings and the need to allow them in designated areas. He felt that the Code should be followed and that the Commission should avoid setting precedents ignoring the provisions of the Code.

**5) APPROVAL OF MINUTES – August 14, 2013 Minutes**

Jim Mosher reported submitting written minor corrections to the minutes.

**Motion:** Commissioner West made a motion to approve the minutes of the Harbor Commission of the August 14, 2013, Regular Meeting, as amended. Commissioner Blank seconded the motion, which carried with 6 ayes and 0 noes. Approved.

**6) CURRENT BUSINESS**

**1. *Appeal of Harbor Resources Decision- Cantilevered Deck at 1114 E. Balboa Blvd***

Harbor Resources has received an application for a 14' deck extension at 1114 E. Balboa Blvd. The Newport Beach Municipal Code (NBMC) limits bayward projections of patio decks

to 5'; therefore, Harbor Resources staff has denied the application. The applicant has filed an appeal to be heard by the Harbor Commission.

**Recommendation:**

- 1) Uphold the denial of the application of the bayward cantilevered deck projection;
- 2) Approve the 14' deck extension as proposed; or
- 3) Approve the 14' deck extension with special conditions.

Harbor Resources Supervisor Shannon Levin presented details of the staff report including a description of the proposed project. She addressed limits set in the Municipal Code of patio decks to five (5) feet past the bulkheads over private waterways or tidelands that are not City-owned. She noted that the applicant has asked for the cantilevered deck to be at a zero lot line and addressed an existing structure and conditions and stated that the proposal to add on to the cantilevered deck would be the same dimension as the existing structure and would go out fourteen and a half (14 ½) feet and to the extension of the property lines. She addressed location, surrounding properties, existing conditions, location of nearby bulkheads and details of the proposal. She noted that staff cannot approve the application on an administrative level and that the applicant is available to respond to questions.

Brion Jeannette, project architect, stated the applicant is asking for an appeal of staff's recommendation on the requirement for the five (5) foot overhang because of the existing structure. The adjacent properties on either side both extend out approximately twenty-five (25) feet further than this property even after installation of the proposed deck. He added that they are requesting removal of the stairs because of safety concerns and explained why they are proposing the cantilevers. Mr. Jeannette addressed the existing gangway, variations in the stairs, support of the project by one of the adjacent neighbors, the proposed extension and location of the City's tidelands and Pierhead line. He added that the applicant is requesting a zero side-yard setback.

Discussion followed regarding the Harbor Commission's jurisdiction, actions required at this time and support of the project by adjacent neighbors.

Mr. Jeannette reported that there are existing piles that are holding up the existing deck and reported that at high tide, water goes to the bulkhead and that the deck is well above the tide.

Discussion followed regarding a fence on the east side, dividing the properties and access to the dock.

Ms. Levin reported that staff denied the application based on the proposal to cantilever beyond five (5) feet and the zero lot line. She added that the properties are unique so that the proposed project is not common.

It was noted that the proposed structure will extend no further than the existing structure and that the Commission has the discretion to grant the variance.

Ms. Levin added that should the Harbor Commission approve it, staff would issue an approval in concept and the applicant would submit to the agencies for approval.

Commissioner Avery expressed concerns with getting approval from the other adjacent neighbor.

Ms. Levin reported that neighbors could be notified, even if the proposal does not affect their property.

It was noted that the Coastal Commission would require notification of neighbors within three hundred (300) feet of the property.

Chair McIntosh invited those interested in addressing the Commission on this item to do so at this time.

Jim Mosher pointed out that if the matter were before the Planning Commission, the matter would not be an appeal, but rather a variance or modification permit from the Zoning Code with requirements regarding findings and notification. He wondered whether there are findings listed in the Harbor Code that the Commission should be making and if not, consideration should be given to amending the Code to include them.

Chair McIntosh closed public comments.

**Motion:** Commissioner West made a motion to approve the fourteen (14) foot deck extension, as proposed, subject to notice to the adjacent owner at 1118 E. Balboa Boulevard, adding that the proposed deck is on the applicant's property, replaces the existing stairs, doesn't exceed the existing structure, does not protrude further than the existing bulkheads on either side of the subject property, is on private property, is not tidelands, the neighboring property has been notified, is consistent with existing conditions throughout the neighborhood and does not affect eelgrass. Commissioner Girling seconded the motion, which carried with 6 ayes and 0 noes. Approved.

***2. Review and Approve the Proposed Harbor Commission Objectives for Fiscal Year 2013-14, and Approve Commission Pairings with Council Members***

The Harbor Commission will review and approve the proposed Commission Objectives for 2013-14. The Commission will also assign and approve the pairing of individual Commissioners with respective Council Members for the upcoming year.

**Recommendation:**

- 1) Approve the proposed Commission Objectives for 2013-14; and
- 2) Approve the pairings of individual Commissioners with respective Council Members for the upcoming year.

Commissioner West reported that at the August meeting, the Subcommittee presented a draft of the proposed Harbor Commission objectives for 2013/2014 and that after some discussion, modifications were made and were incorporated into the proposed draft, and circulated. He listed three aspects presented for review and approval at this time. These include the objectives, the Subcommittees established with respect to each of the objectives, and the related item of the Harbor Commission/Council liaison pairings that have been considered together with the objectives. He distributed a copy of the Subcommittee's recommendations for those pairings. He offered to address questions concerning the proposed objectives and noted there are nine (9) total, and they are organized under the general headings of either 1) ensuring the long-term welfare of Newport Harbor, or 2) promoting Newport Harbor as a preferred and welcoming destination.

Council Member Gardner noted that the objectives were well-received by Council last year, and they will be well-accepted again this year.

It was noted that if they are approved, they will be shared with the Tidelands Management Committee next week.

Chair McIntosh invited those interested in addressing the Commission to do so at this time.

Jim Mosher commented on the Brown Act and felt that most of the objective implementing subcommittees are intended to operate in an informal manner but there are rules by which they have to be set up including that they be strictly advisory, formulating a recommendation to be publicly approved before action is taken and that they be Ad Hoc Committees, with a clear objective and a clear amount of time, after which the committee will dissolve. He felt that objective number 5 is open-ended and suggested developing a clear objective of what that committee is intended to do.

Commissioner West felt that it is implicit in the way the objectives are presented that there is a time limit; that they are being proposed for the coming year.

With regards to objective number 5, it was noted that the Subcommittee has yet to meet but that indirectly, public outreach has been accomplished through the goals and objectives, and that the Subcommittee will meet in the near future.

Chair McIntosh closed public comments.

It was noted that the purpose of the Harbor Commission/Council liaison pairings is to encourage each Commissioner to establish communication with their designated Council liaison to help improve communication between the Commission and Council, and to help Council's understanding of the work of the Commission and clarify thoughts of suggestions Council may have regarding the Commission's work. He listed the recommendations relative to the Harbor Commission/Council liaisons.

**Motion:** Commissioner Stapleton made a motion to accept the Harbor Commission goals and objectives as written as well as the Subcommittee assignments and Commission/Council liaisons. Commissioner Blank seconded the motion, which carried with 6 ayes and 0 noes. Approved.

### ***3. Review the Harbor Commission's Subcommittee Final Report on Public Piers in Newport Harbor***

The Harbor Commission's subcommittee will present their final report on public piers with specific focus on visitor access to the harbor.

#### **Recommendation:**

- 1) Receive and file.

Commissioner Blank addressed the Harbor Commission's objectives for last year regarding a review of existing public piers and the opportunity to identify potential new public piers as they relate to supporting shore side businesses and amenities that boaters may want to visit. He addressed the process and issues considered, action steps taken in the review process and objectives that were defined. Commissioner Blank listed observations made and noted that existing piers are well-used and popular.

In response to an inquiry from Council Member Gardner, Commissioner Blank reported that the most frequent complaint of abuse is lingering or loitering in the shorter-time limit sections.

Commissioner Blank listed challenges associated with specific piers, additional observations and informal surveys and amenities most desired by boaters and identified locations of those amenities as they relate to existing piers. He listed areas well-served by public piers and those that could use additional amenities. He noted opportunities to improve existing public piers through additional maintenance, improvement and attention, and opportunities to place additional piers near existing amenities. He added that the proposed recommendations relate to improving the use of existing piers including performing more frequent and extensive cleaning, dredging under and adjacent to all existing public piers and floats, reconfiguring or reconstructing docks to optimize the available space, instituting a sponsorship or adopt-a-dock program by approaching businesses, communities or individuals to partner with the City to ensure that public piers and docks are well-maintained, improve existing and add amenities on public piers, and add a dedicated function to enforce rules and raise awareness during busy Harbor use. He presented recommendations related to opportunities for additional piers including developing new public piers at the Lido Marina Village, at the Balboa Marina, at Lower Castaways, at the northwest base of the Lido Isle Bridge and one with access to West Coast Highway such as at the east end of the Balboa Bay Resort property or equivalent. In addition, Commissioner Blank addressed next steps.

It was noted that there are two piers in close proximity to each other off the Coast Highway Bridge and there may be some difficulty installing one at Lower Castaways, and that the pier will need to be done in conjunction with the Lower Castaways project.

The possibility of Lido Marina Village installing a public dock was noted which would be an excellent opportunity for the City to negotiate with the developer.

Harbor Resources Supervisor Levin reported meeting with DJM where a discussion occurred regarding Lido Marina Village, in general. One of the conditions of redevelopment would be to ensure public access in that area.

Discussion followed regarding the proposed location of the pier at Balboa Bay Club, the need for additional piers and considering the availability of shore side parking.

It was noted that there is no public pier currently in the Lido Village area and that this objective relates to providing boater access to shore side amenities and does not cover providing pedestrian or vehicular access to one's boat.

Ensuing discussion followed regarding fishing on public docks, whether the proposed site at the Balboa Bay Resort is a public easement, use by non-guests and the priority order of the recommendations.

It was noted that as the recommendations are brought before Council, it is important that Council know how effective the Rhine Channel dock has been.

Harbor Resources Manager Chris Miller commented positively on the report and felt that bold steps can be made for improving the use of existing piers. He reported that he and Ms. Levin will be doing an extensive audit of each public pier.

Ensuing discussion pertained to the availability of State funds to do some of the work.

Council Member Gardner indicated she would like to consult with Council Member Henn to see if he would like the presentation to be given to the Tidelands Management Committee or involve Council through a study session.

Members of the Commission commented positively on the report.

Chair McIntosh invited those interested in addressing the Commission to do so at this time. There was no response and Chair McIntosh closed public comment for this item.

**Motion:** Commissioner West made a motion to receive and file the report and direct staff to provide the presentation to either the Tidelands Management Committee or Council as desired, to represent the Harbor Commission's general recommendations regarding what needs to be done relative to public piers and to further refine focus on the specific objectives that may be pursued in the near term. Commissioner McIntosh seconded the motion.

Ms. Levin noted that a motion is not needed but will proceed with taking the recommendations to Council for its consideration.

Commissioner Blank suggested that it be noted that the recommendations are in order of priority.

## **7) SUBCOMMITTEE REPORTS**

Commissioner Girling reported that the Lower Castaways Subcommittee met last Friday and discussed next steps including the development of conceptual drawings noting that a tentative meeting is scheduled for October 14, 2013, and listed related goals.

Commissioner Avery reported on the Visiting Vessels Subcommittee noting that permits were issued and that Invictus spent time in the Harbor over Labor Day weekend and there have been no major issues or complaints.

Mr. Miller reported that the permit was good for sixteen days. In addition, he reported that the MV Marama has declined to use the mooring as originally planned, and they have made alternate arrangements in the Harbor.

Residents were encouraged to provide feedback to the City regarding the issue.

Mr. Miller noted receiving a lot of positive feedback. He stated that he will generate a report for the Harbor Commission in November recapping the issue.

It was noted that the City fees are not commensurate with what others charge for mega-yachts and a suggestion was made to review those fees in the future.

**8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES**

Council Member Gardner announced that in November, the Chambers will be the setting of a Coastal Commission meeting and they will be presented with a report on the things the City has done in terms of public access. Mr. Miller added that the day coincides with the Harbor Commission meeting so that the Commission's meeting in November will be held in the old Council Chambers.

Council Member Gardner commented on two mooring meetings and felt that the outcome was positive. She commented on a pier on Balboa Island that encroaches in front of the neighbor's house and that she had made a motion to keep things as they are which is to have the Harbor Commission review such matters, but that because of further discussion and the lateness of the Council meeting, it was decided to continue the matter to the next Council meeting.

**9) QUESTIONS AND ANSWERS WITH HARBOR RESOURCES MANAGER ON HARBOR RELATED ISSUES**

Mr. Miller commented on the mooring meetings and reported that all comments have been posted on the City's website. Staff is considering when to present the issue back to Council. Mr. Miller commented on creating a public visitor-serving slip at the Balboa Yacht Basin and addressed signage for same and related rules.

**10) PUBLIC COMMENTS ON SUBCOMMITTEE REPORTS OR QUESTIONS AND ANSWERS WITH COUNCIL LIAISON OR HARBOR RESOURCES MANAGER**

**11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)**

Discussion followed regarding the possibility of changing the Harbor Commission meeting in November to allow Members to attend the Coastal Commission meeting. Mr. Miller reported that Coastal Commission meetings are day meetings and stated that if Members want to attend, they could.

Commissioner Stapleton announced the Harbor Patrol ride-along on September 23, 2013, that Commissioner Blank set up.

Mr. Miller reported the location of the Harbor depth chart on the City's website located here: <http://www.newportbeachca.gov/index.aspx?page=461>

**12) DATE AND TIME FOR NEXT MEETING: October 9, 2013, 6:00 PM**

**13) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:30 p.m.

